

**NORTH CAROLINA
DURHAM COUNTY**

**CDBG Agreement
between the City of Durham and
McCormack Baron Salazar Development, Inc.**

THIS AGREEMENT is entered into as of the _____ day of _____, 2011, by the City of Durham, North Carolina ("Grantee") and McCormack Baron Salazar Development, Inc. ("Developer"), a corporation organized and existing under the laws of the State of Missouri.

WHEREAS, the Grantee desires to make available to the Developer certain funds from the Community Development Block Grant program (CDBG) as prescribed under the Housing and Community Development Act of 1974, as amended, with said grant being made available through the U.S. Department of Housing and Urban Development (HUD) and being designated as HUD grant number B-05-MC-37-0004 and known as the "grant"; and

WHEREAS, the Developer agrees to abide by each paragraph of this Agreement and its attachments and all procedures, rules and regulations imposed upon the Grantee by HUD in connection with its receiving the federal grant referenced above that are applicable to Developer in accordance with HUD requirements; and

WHEREAS, the Developer is receiving CDBG funds from the Grantee in order to conduct eligible improvement activities on behalf of Grantee as set forth in 24 CFR Part 570.201 (c) and to meet the national objective for low- and moderate-income benefit activities as set forth in 24 CFR Part 570.208 (a)(2) as required by the Housing and Community Development Act of 1974.

WHEREAS, the Developer further agrees that all activities conducted under the Agreement shall be of a type authorized by the provisions of Part 8, Article 19 of Chapter 160A of the General Statutes of North Carolina, as amended by Chapter 206 of the Session of laws of 1987.

NOW, THEREFORE, in consideration of the mutual promises herein exchanged by and between the parties, it is agreed as follows:

SECTION 1. SCOPE OF SERVICES.

The Developer promises to perform, or cause to be performed, the services outlined in Attachment A, entitled "Scope of Work," which is made an integral part of this Agreement. The services to be performed by the Developer, hereinafter known as the "Project", shall commence no later than _____, 2011 and those services shall be completed no later than September 15, 2012. Failure to promptly provide the services specified in Attachment A, as determined solely by Grantee, shall result in the termination of this Agreement by Grantee in

accordance with Section 20. Funds shall be reassigned to other projects as determined by the Grantee.

The Developer is an independent Developer with respect to the services to be performed under this Agreement. No person performing any of the work or services described hereunder shall be considered an officer, agent, servant or employee of the Grantee, nor shall any such person be entitled to any benefits available or granted to employees of the City of Durham. The Grantee shall not be obligated to pay the Developer any payments, fees, expenses, or compensation other than the Agreement amount.

SECTION 2. PAYMENT UNDER THE AGREEMENT.

Payments by the Grantee under this Agreement are limited to reimbursement of eligible expenditures made or eligible expenses incurred by the Developer, except where advance payments are explicitly authorized in writing by the Grantee at the sole discretion of the Grantee.

All expenditures and expenses shall be incurred in accordance with the provisions of this Agreement. A schedule of payments shall be included as a part of this Agreement in Attachment A. Payments shall be made based upon this schedule and shall only be made after the Developer has presented documentation of expenses that meet City approval. It is expressly understood and agreed by the Developer that payment by the Grantee will not exceed the maximum sum of **\$550,000.00** for all of the services specified in Attachment A. Further, the Developer understands and agrees that any payment made under this Agreement by the Grantee is limited to funds made available under the grant referenced above. The Grantee shall make payments upon receipt of a request for check from the Developer, documentation of expenditures and expenses incurred and work undertaken by the Developer, the time sheets and narrative description described in Section 13, where applicable and any other documentation that the Director of the Department of Community Development for the Grantee, hereinafter referred to as DCD, may require from the Developer with all such documentation to be in the form and substance satisfactory to DCD. Payments shall be made by the Grantee in accordance with the provisions of this Agreement and only for activities listed in Attachment A.

SECTION 3. PROGRAM INCOME. N/A

SECTION 4. APPLICABLE, FEDERAL, STATE, AND CITY REQUIREMENTS.

The Developer shall perform within and cause its subcontractors and any ultimate recipients of funds under this agreement, to comply with and be eligible under the same federal and state laws, regulations and administrative requirements, which apply to the Grantee and that are applicable to Developer in accordance with HUD requirements. A compilation of references, which may apply to this Agreement, is included as Attachment B. Those references, which

are checked within Attachment B, apply to this Agreement and are made an integral part of it.

SECTION 5. ASSIGNMENT OF AGREEMENT PROHIBITED.

The Developer shall not use this Agreement or its anticipated proceeds to borrow money. The Developer shall not assign any interest in this Agreement.

SECTION 6. CONFLICT OF INTEREST.

The Developer shall permit no officer or employee of the Developer, no member of the City's governing body and no other public official of the governing body of the Durham area to exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this project to:

1. Participate in any discussion relating to this Agreement if it affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is directly or indirectly interested; or
2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof.

The Developer shall permit no members of or delegate to the Congress of the United States to be admitted to any share or part thereof or to any benefit to arise herefrom. The Developer covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Agreement. The Developer further covenants that no person having any such interest shall be employed in the performance of this Agreement. The Developer shall be subject to and comply with applicable conflict of interest provisions of the CDBG regulations as published at 24 CFR Part 570.611 and 24 CFR Part 85.36. The Developer shall make no loans to its directors or officers.

Notwithstanding the foregoing, the parties acknowledge that Developer, or affiliates of the Developer, may in the future have a direct or indirect interest in a portion of the site being improved as a result of the Project, provided that such interest shall be limited to those established pursuant to terms expressly approved by the City.

SECTION 7. POLITICAL ACTIVITY.

The Developer shall not permit any of the funds, materials, property or services provided under this Agreement to be used for any partisan political activity, or to further the election or defeat of any candidate for public office, or for publicity or propaganda purposes designed to support or defeat legislation pending before the United States Congress, State of North Carolina, County of Durham or the City of Durham.

SECTION 8. DEVELOPER LIABLE FOR LEASES. N/A

SECTION 9. IDENTIFICATION OF DOCUMENTS.

All reports, maps and other documents completed as a product of this Agreement, other than documents used in the administration of the Agreement, such as reports to the Grantee, shall have placed thereon by the Developer the following statement:

NOTE

“The preparation of this document was financed in part through funds from the City of Durham’s Community Development Block Grant Program. This grant was made available to the City of Durham under provisions of Title I of the Housing and Community Development Act of 1974, as amended, and is referred to as project number B-05-MC-370-0004.”

SECTION 10. FINANCIAL RECORDS.

The Scope of Work, Completion Schedule, Operating Budget, Requests for Reimbursement Schedule, and other project information and procedures contained in Attachment A of this Agreement are attached to and made a part of this Agreement. The Developer shall establish and maintain a financial management system, which will account for all funds received under this Agreement and expenditures made in furtherance of the project and that such system shall be created and maintained in accordance with generally accepted accounting practices and procedures. The system shall include the following:

1. A general ledger (balance sheet and statement of revenue and expenses) in which to record a summary of all accounting transactions shall be maintained. In addition, the Developer shall maintain a cash receipt and disbursement register in which receipts and disbursements will be documented. Funds disbursed by the Developer shall be made by pre-numbered checks, used in numerical sequence and must be supported by appropriate documentation. This documentation includes items such as payroll, time and attendance records, invoices, contracts, travel payments, information evidencing the nature and propriety of each payment, and notation showing the approval of an authorized official of the Developer.
2. The Developer shall maintain such records and accounts, including property, personal and financial records so as to assure a proper accounting for all project funds. The Developer shall retain these records for five (5) years after the date of final payment under this Agreement from the Grantee to the Developer. However, at any time after the Agreement termination, the Developer may turn these records over to the Grantee for retention after completion and acceptance of required audits.

3. On request of the Grantee, the Developer shall provide an accounting for all funds paid to it by the Grantee under this Agreement. More specifically, the Developer's financial management system shall provide for:
 - a. Accurate, current and complete disclosure of the financial results of activities under this Agreement in accordance with generally accepted business practices. If the Developer's accounting records are maintained on a cash basis, the Developer must develop information of accounts payable and accounts receivable through an analysis of the documents in the file, or on the basis of its best estimates.
 - b. Records that adequately identify the source and application of funds under this Agreement. These records shall contain information pertaining to agreement awards and authorizations, encumbrances and unencumbered balances, assets, liabilities, outlays and income.
 - c. Effective control over and accountability for all funds, property and other assets attributable to the Agreement. The Developer shall adequately safeguard all such assets and shall assure that they are used solely for the performance of the Agreement.
 - d. Comparison of actual expenditures with budgeted amounts for those expenditures and comparison of financial information with performance or productivity data, including the production of unit cost information whenever required by DCD.
 - e. Procedures for determining the allowability and allocability of costs.
4. The Developer's financial records shall be audited by a certified public accountant at least annually.
5. A copy of the certified audit of the funds received by the Developer under this Contract, and an accompanying Management Letter, shall be provided to the Grantee for each year in which activities under this Contract were conducted. Should there be an exception taken during any audit, the Developer shall resolve the findings and recommendations within thirty (30) days after completion of the audit. The foregoing requirement may be satisfied by audited financial statements of the Developer, supplemented as may reasonably be requested by the City to reflect funds attributable to the Agreement.
6. The Developer shall provide any information that DCD may reasonably request pertaining to the Developer's financial management under this Agreement.

SECTION 11. AUDITS AND INSPECTIONS.

At any time during normal business hours and as often as the Grantee, HUD, or the Comptroller General of the United States may deem necessary, the Developer shall make available to the Grantee, HUD, or representatives of the Comptroller General for examination, all of the Developer's records with respect to matters covered by this Agreement, and the Grantee, HUD or representatives of the Comptroller shall be permitted to audit, examine and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials payable, records or personnel, and other data relative to all matters covered by this Agreement.

SECTION 12. FIDELITY BOND. (NA)

SECTION 13. REPORTING.

The Developer shall submit monthly or quarterly reports to the Grantee within seven (7) days following the closure of the month or quarter for which the activity is being reported. The appropriate reporting period and format for each Developer's activities shall be established by the Grantee in collaboration with the Developer prior to execution of the Developer's Agreement. The Developer shall provide to the Grantee any other information determined by the Grantee to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the Developer in making any report to the Grantee required by this Agreement may, at the Grantee's sole discretion, result in delays in payment to the Developer of part of all of the Developer's request for funds. A delay in making a disbursement by the Grantee to the Developer does not change the time requirements of the Developer to submit reports to the Grantee.

SECTION 14. PROOF OF AGREEMENT REQUIREMENTS.

The Developer shall furnish to the Grantee, within ten (10) days after the subcontract is executed, a copy of any subcontract if it is to be funded, whole or in part, with funds provided from this Agreement. Such subcontracts shall require subcontractors to comply with all applicable federal, state and local laws and regulations. All subcontracts shall be of a form and substance acceptable to the Grantee.

SECTION 15. PROHIBITION AGAINST SOLICITING AND ACCEPTING FAVORS AND PROCUREMENT.

Officials and employees of the Developer shall neither solicit nor accept gratuities, favors or anything of monetary value from subcontractors or potential subcontractors. The Developer further agrees that all procurement transactions which the Developer may enter into as a result of this Agreement shall be conducted in a manner so as to provide maximum, open and free competition and in accordance with the provisions of all applicable Uniform Administrative

Requirements as described in the CDBG regulations at 24 CFR Part 570.502. Developers engaged in procurement activities with CDBG funds are also required to maintain a contract administration system that ensures Developers perform in accordance with the terms, conditions and specifications of their contracts or purchase orders as described at 24 CFR Part 85.36. Notwithstanding the foregoing, the City acknowledges that those procurement transactions identified by Developer as required to perform the Work have previously been reviewed and approved by the HUD, in consultation with the City, without being subject to 24 CFR Part 85 following the City's previous competitive procurement of the Developer and its affiliate, McCormack Baron Salazar, Inc.

SECTION 16. MAINTENANCE OF EFFORT.

The Developer shall maintain a level of aggregate expenditures for its other projects or activities, which is not less than the level of aggregate expenditures, which existed prior to the execution of this Agreement. The Developer shall promptly notify the Grantee of any matters having a material tendency to affect compliance with this requirement.

SECTION 17. EQUAL OPPORTUNITY.

The Developer shall comply with the requirements of Attachment C as required by U.S. Executive Order 11246.

SECTION 18. EMPLOYMENT OPPORTUNITIES FOR SMALL BUSINESS AND LOWER INCOME PERSONS.

The Developer will take affirmative steps to assure that the small businesses and lower income persons of the project area (defined as the City of Durham) are utilized whenever possible as sources of supplies, equipment, construction and services.

SECTION 19. EQUAL BUSINESS (EBO) OPPORTUNITY ORDINANCE.

The Developer shall comply with all applicable provisions of Chapter 26 of the Durham City Code (the Equal Business Opportunity ordinance), as amended from time to time. It shall be the policy of the Developer to provide minorities and women equal opportunity to participate in all aspects of the Developer's contracting programs, including but not limited to employment, construction projects, and/or materials and services contracts, consistent with the law. It shall also be the policy of the Developer to prohibit discrimination against any business on the basis of race, color, national origin, religion, sex, age, handicap or veteran's status. The Developer shall conduct its contracting program so as to prevent such discrimination, correct present effects of past discrimination and to resolve claims of such discrimination.

The failure of the Developer to comply with Chapter 26 shall be a material breach of agreement, which may result in the rescission or termination of this agreement and/or other appropriate remedies in accordance with the provisions of that chapter, this Agreement, and State law. The final version of all SDBE documents and information submitted by the Developer and approved by the Grantee are a legal and binding part of this Agreement.

SECTION 20. RELIGIOUS ORGANIZATIONS.

The Developer agrees and understands that no Community Development Block Grant funds provided under this contract shall be used for any religious activities, to promote any religious interests, or be used for the benefit of a religious organization in accordance with the Federal regulations as specified in 24 CFR 570.200(j).

SECTION 21. TERMINATION OF AGREEMENT.

1. For Cause.

- a. If, through any cause, the Developer shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Developer shall violate any of the covenants, agreements or stipulations of the Agreement; or if the grant from HUD under which this Agreement is made is terminated, reduced, impounded, suspended or withheld by HUD, the Grantee shall thereupon have the right to terminate this Agreement. Termination shall be accomplished by the Grantee's giving written notice to the Developer at least ten (10) days prior to the date that the Agreement is to be terminated. In the event HUD reduces the amount of its grant, however, the parties hereto may amend this Agreement so that it will accommodate and reflect the action taken by HUD.

The Grantee upon written notice to the Developer may also withhold payment of any unearned portion of the Grant if the Developer is unable or unwilling to accept any additional conditions that may be provided by law, by executive order, by regulations or by other policy announced by HUD at any time.

If the Grantee withholds payment, it shall advise the Developer in the written notice what action must be taken as a condition precedent to the resumption of payments. Upon such termination the Developer shall remit any unexpended balance of advanced payments on account of the Grant as well as such other portions of such payments previously received as determined by the Grantee to be due. The action of the Grantee in accepting any such amount

shall not constitute a waiver of any claim which the Grantee may otherwise have arising out of this Agreement.

2. For Convenience.

- a. The Agreement may also be terminated by the Grantee without cause and independently from any action by HUD pertaining to the federal grant under which this Agreement has been funded, at the convenience and the sole discretion of the Grantee. The Grantee shall provide the Developer with at least thirty (30) days written notice prior to the effective date of termination under this paragraph. In the event of termination for convenience, the Grantee shall make payment for the services performed and authorized expenditures incurred, if any, prior to the termination date, by the Developer in accordance with this Agreement. In the event of termination, all property, finished or unfinished documents, data, studies and reports purchased or prepared by the Developer under this Agreement, shall become the property of the Grantee and shall be delivered to the Grantee within thirty (30) days after the completion of the certified audit of this Agreement pursuant to Section 9 Part 5.

SECTION 22. HOLD HARMLESS PROVISION.

To the fullest extent permitted by law, the Developer agrees to indemnify and hold harmless the Grantee and its agents, officers and employees from any and all costs, damages, claims, judgments and expenses, including attorney's fees, that may arise in any manner from, as a result of, relating to, or in connection with the Developer's performance of this Agreement.

SECTION 23. REVERSION OF ASSETS.

N/A

SECTION 24. CITY DISCRIMINATION POLICY.

The City of Durham opposes discrimination on the basis of race and sex and urges all of its Developers to provide a fair opportunity for minorities and women to participate in their work force and as subcontractors and vendors under City contract.

SECTION 25. ENVIRONMENTAL REVIEW REQUIREMENT.

An environmental review must be completed prior to the commencement of any activities/projects, and prior to the commitment of any funds. Agreements shall not be executed until an environmental review has been completed. 24 CFR 58.22 (a) states that a recipient may not commit HUD assistance funds under a program listed in 58.1(b) on an activity or project until HUD or the State

has approved the recipient's Request for the Release of Funds (RROF) and the related certification or the responsible entity. In addition, until the RROF and related certification has been approved, the recipient may not commit non-HUD funds on an activity or project under a program listed in 58.1 (b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives. If an activity is exempt under 58.34, or not subject to 58.5 under 58.35 (b), no RROF is required and a recipient may undertake the activity immediately after the award of the assistance. Additionally, 24 CFR 58.30 (b), states that the environmental review process should begin as soon as a recipient determines the projected use of HUD assistance. The City represents that all environmental reviews referenced in this Section 25 have been completed on or before the date of this Agreement.

SECTION 26. SOLE AGREEMENT.

This document, and the attachments incorporated herein, contain the entire agreement between the parties with respect to the subject matter of this agreement and no statement, promises or inducements made by either party, or representative of either party with respect to the subject matter of this agreement, that is not contained in this written agreement, shall be valid and binding. This Agreement may not be enlarged, modified or altered except in writing by all the parties.

SECTION 27. RECORDS TO BE MAINTAINED

The Developer shall maintain all records required by the Federal regulations specified in 24 CFR 507.506 that are pertinent to the activities to be funded under this agreement. These records shall be retained for a period of five years beginning at the time the Developer receives notice in writing from the Grantee that this project is complete. Such records shall include, but not be limited to:

- a. This agreement and any amendments;
- b. 24 CFR Part 570 regulations;
- c. Records providing a full description of each activity undertaken;
- d. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- e. Records documenting compliance with the Fair Housing and Equal Opportunity components of the CDBG Program;
- f. Financial records as required by 24 CFR Part 570.502, OMB Circular A-110, and OMB Circular A-122.
- g. Other records necessary to document compliance with Subpart K of 24 CFR 570

IN TESTIMONY WHEREOF, the parties hereto have caused this Agreement to be executed this _____ day of _____, 2011.

CITY OF DURHAM

By _____
City Manager

ATTEST:

CITY OF DURHAM

City Clerk

McCormack Baron Salazar Development,
Inc.

By _____
Kevin McCormack, President

ATTEST:

Secretary

(Affix corporate seal here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a Notary Public in and for the aforesaid County and State certify that _____ personally appeared this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

My Commission Expires

Notary Public

**STATE OF MISSOURI
COUNTY OF ST. LOUIS**

I, a Notary Public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is Secretary of McCormick Baron Salazar, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its President, whose name is Kevin McCormack, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

My Commission Expires

Notary Public

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This the _____ day of _____, 2011.

Finance Officer

ATTACHMENT A

Scope of Work

LOCATION

The area is approximately 19.83 acres and is bound by the area north of the southern right of way of Piedmont Ave., east of the western right of way of South Roxboro Street, south of the northern right of way of Lakewood Avenue including the extended intersection of South Roxboro Street and Lakewood Avenue, and bounded by the area 100' east of Cypress Court and Poinciana Drive. Funds awarded under this agreement will be used for the predevelopment costs to include but are not limited to surveying, phase I environmental, geotechnical subsurface exploration, design to include civil and landscape, site plan approval, preparation of a bid package for site prep and infrastructure installation and completion of the site preparation for the entire 19.83 acre site and the installation of the infrastructure for the phase 1 multi-family rental development.

TASK # 1 SCOPE OF WORK – GEOTECHNICAL SUBSURFACE EXPLORATION

The Developer shall oversee and provide Geotechnical Subsurface Exploration for the 19.83 acre Rolling Hills site. In this contract, “Work” means the services that the Developer is required to perform pursuant to this agreement and all of the Developer’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this agreement states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Developer. Estimated completion date of October 15, 2011

REIMBURSEMENT

Reimbursement for actual costs incurred by the Developer in an amount not to exceed \$82,319.00. Developer payment will be based upon receipt by the City of an invoice for the work completed along with a payment request form. The invoice must be submitted to the Department of Community Development, 101 City Hall Plaza, Durham, North Carolina 27701. The pay request must include a final engineering report that at a minimum provides a description of the site conditions and the field exploration and the laboratory test performed in standard practice of geotechnical engineers along with recommendations for design of the site and the buildings to be constructed.

TASK # 2 SCOPE OF WORK – PROFESSIONAL SERVICES ENGINEERING AND LANDSCAPE

The Developer shall oversee and provide the design and permitting of the demolition, mass grading and coordination of remediation activities related to preparing and establishing building pads and the achievement of subgrades for the 19.83 acre Rolling Hills site. In this contract, “Work” means the services that the Developer is required to perform pursuant to this agreement and all of the Developer’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this agreement states that a task is to be performed or that

a duty is owed, it shall be presumed that the task or duty is the obligation of the Developer. Estimated completion date for all tasks is December 15, 2011.

REIMBURSEMENT

Reimbursement for actual costs incurred by the Developer in an amount not to exceed \$137,637.00. Developer payment will be based on the following fee schedule:

I.	Design Development	\$12,500
II.	Site Plan Permitting	\$21,500
III.	Construction Document Permitting	\$28,500
IV.	Mass Grading/Project Coordination	\$25,000
V.	Wetlands Mapping/Permitting	\$16,200
VI.	Private Utility Mapping/Coordination	\$ 7,500
VII.	Bidding Assistance/Construction Administration	\$15,500
VIII.	Reimbursable Expenses	<u>\$10,937</u>
	Total	\$137,637

Upon completion of the above tasks, an invoice for the work completed along with a payment request form must be submitted to the Department of Community Development, 101 City Hall Plaza, Durham, North Carolina 27701. The goals of the above tasks are to design, obtain site plan approval, create bid specifications for the bidding of the site preparation for the entire site and for the Phase I multi-family rental development infrastructure and provide construction administration during the site preparation and the installation of the infrastructure improvements.

TASK # 3 SCOPE OF WORK – PROFESSIONAL SERVICES DESIGN OF PUBLIC INFRASTRUCTURE

The Developer shall oversee and provide the design and permitting of the public roads, public and private utilities for the approximately seven acre site that will serve phase 1 of the multi-family rental development. Estimated completion date for all tasks is December 15, 2011.

Reimbursement for actual costs incurred by the Developer in an amount not to exceed \$142,260.00. Developer payment will be based on the following fee schedule:

Design Development	\$19,000
Site Plan Permitting	\$15,000
Construction Document Permitting	\$45,500
Pedestrian Mew/Buffer Planting	\$20,200
Private Utility Coordination	\$ 8,500
Landscaping	\$ 5,500
Bidding Assistance/Construction Administration	\$16,500
Reimbursable Expenses	<u>\$12,560</u>
Total	\$142,260

The goals of the above tasks are to design, obtain site plan approval, create bid specifications for the bidding of the site preparation for the entire site and for the Phase I multi-family rental development infrastructure and provide construction administration during the site preparation and the installation of the infrastructure improvements

TASK # 4 SCOPE OF WORK – PAYMENT OF NUTRIENT BANK CREDITS

The 19.83 acre site will utilize an off-site nutrient bank in order to comply with the City of Durham Stormwater Performance Standards. The standards impose a cap on nitrogen and phosphorous export from development sites and due to space constraints on the site, the 19.83 acre site will provide on-site treatment through the use of wet ponds and bioretention. In order to meet the export caps, credits from an off-site bank will need to be acquired. These credits will need to be paid at the time of the site plan approval process. Estimated pay request date of December 15, 2011.

REIMBURSEMENT

The Developer will be reimbursed in an amount not to exceed \$112,500.00 upon completion of the site plan approval process, Developer will submit a request in such form and with such documentation as be reasonably required by the City.

TASK #5 SCOPE OF WORK – MANAGEMENT FEE

Developer will earn a 16% management fee for the above activities excluding the payment of credits for the nutrient bank and the professional design service. The fee in the amount of \$57,955.00 will be paid upon completion of the above tasks. Estimated pay request date of December 15, 2011.

ATTACHMENT B

Certifications and Compliance Requirements

- ☐ 1. 24 CFR Part 85 Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally recognized Indian Tribal Governments.
- ☐ 2. Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-7), and as supplemented by Department of Labor regulations (29 CFR, Part 5).
- ☐ 3. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by the Department of Labor regulations (29CFR, Part 5).
- ☒ 4. Title VI of the Civil Rights Act of 1964 (PL88-352) and regulations issued pursuant thereto (24 CFR Part 1) on nondiscrimination in Federally assisted programs.
- ☒ 5. Section 109 of the Housing and Community Development Act of 1974 and regulations issued pursuant thereto (24 CFR Part 570.612 et seq., known as subpart K)
- ☒ 6. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60) on nondiscrimination in employment.
- ☒ 7. Copeland "Anti-Kick Back" Act (18 U.S.C. 874).
- ☐ 8. Section 3 of the Housing and Urban Development Act of 1968, as amended for training and employment of lower-income residents of projected areas and awarding of contracts.
- ☐ 9. Lead Based Paint Poisoning Prohibition (PL91-695).
- ☐ 10. North Carolina General Statutes 143-128 et seq.
- ☐ 11. Hatch Act (5 U.S.C. 1501-1508).
- ☐ 12. Building design, construction or alteration must comply with "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped" (#A-117.1-R 1971).
- ☐ 13. Executive Order 11296 relating to evaluation of flood hazard.

- ☐ 14. Title VIII of the Civil Rights Act of 1968 (PL 90-284), as amended Fair Housing Policy.
- ☐ 15. Executive Order 11063 on equal opportunity in housing and nondiscrimination.
- ☐ 16. Section 306 of the Clean Air Act (42 U.S.C. 1857(h))
- ☐ 17. Environmental Protection Agency regulations (40 CFR, Part 15).
- ☒ 18. Age Discrimination Act of 1967, as amended.
- ☐ 19. The Rehabilitation Act of 1973, as amended, Sections 503 and 504, which prohibits discrimination against the handicapped.
- ☒ 20. City of Durham's Disadvantaged Business Enterprise Plan.
- ☐ 21. OMB Circular A-122 "Cost Principles for Non-Profit Organizations"
- ☐ 22. Treasury Circular 1075 relating to the use of Community Development funds within 72 hours after drawdown.
- ☐ 23. Community Development Administrative Regulations 24 CFR 570.
- ☐ 24. N. C. Fair Housing Law
- ☐ 25. City of Durham Fair Housing Law
- ☐ 26. OMB Circular A-133 "Audits of States, Local Governments and Nonprofit Organizations"

ATTACHMENT C

Equal Employment Opportunity U. S. Executive Order 11246 (excerpts)

"During the performance of this Agreement, the Developer being referred to as Developer, agrees as follows:"

1. " The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2. "The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

3. "The Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract officer, advising the labor union or workers' representative of the Developer's commitments under Section 2020 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. "The Developer will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

5. "The Developer will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and, by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

6. "In the event of the Developer's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965 or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by Law.

7. "The Developer will include the provisions of Paragraphs 1 through 7 in

every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Developer will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided however, that in the event the Developer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Developer may request the United States to enter into such litigation to protect the interest of the United States."